

WORLD TRADE
ORGANIZATION

G/ADP/N/1/NZL/2

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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

Original: English

NOTIFICATION OF LAWS AND REGULATIONS
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

NEW ZEALAND

The following communication, dated 16 August 1995, has been received from the Permanent Mission of New Zealand.

Attached is a corrected version of document G/ADP/N/1 and G/SCM/N/1.

It should be noted that the attached is an informal and unofficial consolidation of the Dumping and Countervailing Duties Act 1988, the Dumping and Countervailing Duties Amendment Act 1990 and the Dumping and Countervailing Duties Amendment Act 1994.

Dumping and Countervailing Duties

ANALYSIS

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1988, No. 158

An Act to provide for the imposition of dumping and countervailing duties

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short title and commencement:

- (1) This Act may be cited as the Dumping and Countervailing Duties Act 1988.
- (2) This Act shall come into force on the 1st day of December 1988.

2. Application: This Act shall apply to investigations initiated under Section 10 of this Act on or after commencement of this Act.

3. Interpretation:

- (1) In this Act, unless the context otherwise requires:

"Collector" has the meaning given to it in Section 2(1) of the Customs Act 1966;

"Dumping", in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods determined in accordance with the provisions of this Act, and "dumped" shall have a corresponding meaning;

"Exporter" has the meaning given to it in Section 2(1) of the Customs Act 1966;

"Goods" means all kinds of moveable personal property, including animals;

"Foreign country" means any country other than New Zealand;

"Foreign government" means:

- (a) The Government of a foreign country;
- (b) A provincial, State, municipal, or other local or regional Government or authority of a foreign country;
- (c) A body that exercises authority for an association of foreign countries;
- (d) A person, agency or institution acting for, or on behalf of, a Government or body referred to in paragraph (a) or paragraph (b) or paragraph (c) of this definition.

"Importer" has the meaning given to it in Section 2(1) of the Customs Act 1966;
"Like goods", in relation to any goods, means:

- (a) Other goods that are like those goods in all respects; or
- (b) in the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods.

"Minister" means the Minister of Commerce;

"Secretary" means the Secretary of Commerce;

"Shipment" has the meaning given to it in Section 2(1) of the Tariff Act 1988;

"Specific subsidy" means a subsidy that is specific to an enterprise or industry, or a group of enterprises or industries, within the jurisdiction of a foreign government;

"Subsidized goods" means goods in respect of the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of which a specific subsidy has been or will be paid, granted, authorized, or otherwise provided, directly or indirectly, by a foreign government;

"Subsidy" includes any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods, as a result of any scheme, programme, practice, or thing done, provided, or implemented by a foreign government, but does not include the amount of any duty or internal tax imposed on goods by the Government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback;

"Tariff" has the meaning given to it in Section 2(1) of the Tariff Act 1988;

"WTO Agreement" means the Agreement Establishing the World Trade Organization adopted at Marrakesh on the 15th day of April 1994.

(2) For the purposes of this Act, a purchase or sale of goods shall not be treated as an arm's-length transaction if:

- (a) There is any consideration payable for or in respect of the goods other than their price; or
- (b) The price is influenced by a relationship between the buyer, or a related person, and the seller, or a related person; or
- (c) In the opinion of the Secretary, the buyer, or a person related to the buyer, will, directly or indirectly, be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

(3) Where goods are imported into New Zealand and are purchased by the importer from the exporter (whether before or after exportation) for a particular price and the Secretary is satisfied, after having regard to:

- (a) The amount of the price paid or to be paid for the goods by the importer; and
- (b) Such other amounts as the Secretary determines to be costs necessarily incurred in the importation and sale of the goods; and
- (c) The likelihood that the amounts referred to in paragraph (a) and paragraph (b) of this subsection will be recovered within a reasonable time; and
- (d) Such other matters as the Secretary considers relevant

that the importer, whether directly or through an associate through a related person sells those goods in New Zealand (whether in the condition in which they were imported or otherwise) at a loss, the Secretary may treat the sale of those goods as indicating that the importer or a related person will, directly or indirectly, be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price for the purposes of subsection (2)(c) of this Section.

(4) For the purposes of this Act, a person shall be deemed to be related to another person if:

- (a) One of them directly or indirectly controls the other (within the meaning of subsection (5) of this Section); or
- (b) Both of them are directly or indirectly controlled by a third person (within that meaning); or
- (c) Together they directly or indirectly control a third person (within that meaning); or

(5) For the purposes of subsection (4) of this Section, a person controls another person if the first mentioned person is in a position, whether legally or operationally, to exercise a restraint or direction over the other person.

(6) For the purposes of this Act, where, during the exportation of goods to New Zealand, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.

3A. Meaning of "industry"

- (1) For the purposes of this Act, the term "industry", in relation to any goods, means:
 - (a) The New Zealand producers of like goods; and
 - (b) Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

3B. Meaning of "goods of Australian origin"

For the purposes of this Act, "goods of Australian origin" means goods falling within the classes of goods for the time being entitled to be entered under the Tariff at the rates and exemptions provided for Australia, or, if no rates or exemptions are provided in relation to particular goods for Australia, that would be entitled to be entered under the Tariff if rates and exemptions were provided in relation to those particular goods.

3C. Act to bind the Crown

This Act binds the Crown

4. Export price

(1) Subject to this Section, for the purposes of this Act, the export price of any goods imported or intended to be imported into New Zealand which have been purchased by the importer from the exporter shall be:

- (a) Where the purchase of the goods by the importer was an arm's-length transaction, the price paid or payable for the goods by the importer other than any part of the price that represents:
 - (i) Costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges and expenses generally incurred on sales for home consumption; and
 - (ii) any other costs, charges, and expenses resulting from the exportation of the goods, or arising from their shipment from the country of export; or
- (b) Where the purchase of the goods by the importer was not an arm's-length transaction, and the goods are subsequently sold by the importer in the condition in which they were imported to a party who is not related to the importer, the price at which the goods were sold by the importer to that person less the sum of the following amounts:
 - (i) The amount of any duties and taxes imposed under any Act; and

- (ii) The amount of any costs, charges, or expenses arising in relation to the goods after exportation; and
 - (iii) The amount of the profit, if any, on the sale by the importer or, where the Secretary so directs, an amount calculated in accordance with such rate as the Secretary determines as the rate of profit on the sale by the importer having regard to the rate of profit that would normally be realized on sales of goods of the same general category by the importer where such sales exist; or
- (c) Where the purchase of the goods by the importer was not an arm's-length transaction, and the goods are subsequently sold by the importer in a condition different from the condition in which they were imported, a reasonable price determined by the Secretary in the circumstances of the case.
- (2) Where:
- (a) Goods are or are to be shipped to New Zealand on consignment and there is no known purchaser in New Zealand for the goods; or
 - (b) there is no exporter's sale price or no price at which the importer or a person not related to the importer, has purchased or agreed to purchase the goods;

the export price, for the purposes of this Act, shall be determined in such manner as the Secretary considers appropriate having regard to all the circumstances of the exportation.

5. Normal value

(1) Subject to this Section, for the purposes of this Act, the normal value of any goods imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(2) Where the Secretary is satisfied that the normal value of goods imported or intended to be imported into New Zealand cannot be determined under subsection (1) of this Section because:

- (a) There is an absence of sales that would be relevant for the purposes of determining a price under that subsection; or
- (b) the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) of this Section are not suitable for use in determining such a price; or
- (c) like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's-length transactions by the exporter and it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1) of this Section;

the Secretary may determine that the normal value, for the purposes of this Act, shall be either:

- (d) The sum of:
 - (i) Such amount as determined by the Secretary to be the cost of production or manufacture of the goods in the country of export; and
 - (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export.
 - (A) Such amounts as the Secretary determines would be reasonable amounts for administrative and selling costs, delivery charges, and other charges incurred in the sale; and

- (B) an amount calculated in accordance with such rate as the Secretary determines would be the rate of profit on that sale having regard to the rate of profit normally realized on sales of goods (where such sales exist) of the same general category in the domestic market of the country of export of the goods where such sales exist; or
 - (e) the price that is representative of the price paid for like goods sold at arm's-length in the ordinary course of trade in the country of export for export to a third country.
- (3) Where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison the normal value and the export price shall be compared by the Secretary:
- (a) At the same level of trade; and
 - (b) in respect of sales made at as nearly as possible the same time; and
 - (c) with due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and physical characteristics, and any other differences which affect price comparability.
- (4) Where the normal value of goods exported to New Zealand is to be ascertained in accordance with subsection (2) of this Section, the Secretary shall make such adjustments as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.
- (5) Where:
- (a) The actual country of export of goods imported or intended to be imported into New Zealand is not the country of origin of the goods; and
 - (b) the Secretary is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export;

the Secretary may direct that the normal value of the goods shall be so ascertained.

- (6) Where the Secretary is satisfied, in relation to goods imported or intended to be imported into New Zealand that:
- (a) The price paid for like goods:
 - (i) Sold for home consumption in the country of export in sales that are arm's length transactions; or
 - (ii) sold in the country of export to a third country in sales that are arm's-length transactions;
- is, and has been for an extended period of time and in respect of a substantial quantity of like goods, less than the sum of:
- (iii) Such amounts as the Secretary determines to be the cost of production or manufacture of the like goods in the country of export; and
 - (iv) such amounts as the Secretary determines to be reasonable amounts for administrative and selling costs, delivery charges and other charges necessarily incurred in the sale of the like goods by the seller of the goods; and
- (b) It is likely that the seller of those like goods will not be able to fully recover the amounts referred to in subparagraphs (iii) and (iv) of paragraph (a) of this subsection within a reasonable period of time;

the price so paid for those like goods shall be deemed not to have been paid in the ordinary course of trade.

6. Export price and normal value

(1) Where the Secretary is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under Section 4 of this Act, or the normal value of goods to be ascertained under Section 5 of this Act, the normal value or export price, as the case may be, shall be such amount as is determined by the Secretary having regard to all available information.

(2) For the purposes of subsection (1) of this Section, the Secretary may disregard any information that the Secretary considers to be unreliable.

7. Amount of subsidy

(1) In this Act, the expression "amount of subsidy", in relation to any subsidized goods, means the amount determined by the Secretary as being the benefit conferred on the recipient of the subsidy.

(2) For the purposes of subsection (1) of this Section:

- (a) The provision of equity capital by a foreign government, shall not be regarded as conferring a benefit, unless the investment decision in relation to the provision of that equity capital can be regarded as inconsistent with the usual investment practice (including for provision of risk capital) of private investors in the territory of the exporting country;
- (b) the provision of a loan by a foreign government shall not be regarded as conferring a benefit, unless the amount that the recipient of the loan pays under the loan is less than the amount that the recipient would pay under a comparable commercial loan that the recipient could obtain on the market, in which case, the benefit to the recipient shall be deemed to be the difference between those two amounts;
- (c) The provision of a loan guarantee by a foreign government shall not be regarded as conferring a benefit, unless the amount that the recipient of the loan pays under the government guaranteed loan is less than the amount that the recipient would pay under a comparable commercial loan that was not so guaranteed, in which case, the benefit to the recipient shall be deemed to be the difference between those two amounts;
- (d) the provision of goods or services, or the purchase of goods, by a foreign government, shall not be considered as conferring a benefit, unless the goods or services provided are provided for less than adequate remuneration, within the meaning of subsection (4) of this Section, or the goods purchased are purchased for more than adequate remuneration, as the case may be.

(3) For the purposes of subsection (1) of this Section the following amounts shall not be included in the amount of the subsidy:

- (a) Any application fee, or other costs necessarily incurred in order to qualify for, or to receive the benefit of, the subsidy;
- (b) any export taxes, duties, or other charges levied on the export of the goods to New Zealand that are specifically intended to offset the subsidy.

(4) For the purposes of subsection (2)(d) of this Section, adequate remuneration shall be determined in relation to prevailing market conditions, in the exporting country, for the goods and services in question, taking into account price, quantity, availability, marketability, transportation and other conditions of purchase and sale.

(5) Where the Secretary is satisfied that sufficient information has not been furnished or is not available to enable the amount of the subsidy to be ascertained for the purposes of this Act, the amount

of the subsidy shall be such amount as is determined by the Secretary having regard to all available information that the Secretary considers to be reliable.

8. Material injury to industry

(1) In determining, for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidization of goods imported or intended to be imported into New Zealand from another country, the Secretary shall examine:

- (a) The volume of the dumped or subsidized imports; and
- (b) the effect of the dumped or subsidized imports on prices in New Zealand for like goods; and
- (c) the consequent impact of the dumped or subsidized imports on the relevant New Zealand industry.

(2) Without limiting the generality of subsection (1) of this Section, and without limiting the matters the Minister may consider, the Secretary shall have regard to the following matters:

- (a) The extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidized goods either in absolute terms or in relation to production or consumption in New Zealand; and
- (b) the extent to which the prices of the dumped or subsidized goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers;
- (c) the extent to which the effect of the dumped or subsidized goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred; and
- (d) the economic impact of the dumped or subsidized goods on the industry, including:
 - (i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of production capacity; and
 - (ii) factors affecting domestic prices; and
 - (iii) the magnitude of the margin of dumping; and
 - (iv) actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.
- (e) Factors other than the dumped imports which have injured, or are injuring, the industry, including:
 - (i) The volume and prices of goods not sold at dumped prices or that are not subsidized; and
 - (ii) contraction in demand or changes in the pattern of consumption; and
 - (iii) restrictive trade practices of, and competition between, overseas and New Zealand producers; and
 - (iv) developments in technology; and
 - (v) the export performance and productivity of the New Zealand producers;

- (f) The nature and extent of importations of dumped or subsidized goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

(3) For the purposes of this Section, the Secretary may disregard any information that the Secretary considers to be unreliable.

9. Form of notice

For the purposes of this Act, reference to a notice means a notice:

- (a) Containing a brief summary of the reasons for the giving of the notice; and
- (b) Given to:
 - (i) The Government or Governments of the country or countries of the export of goods to which the notice relates; and
 - (ii) exporters and importers known by the Secretary to have an interest in those goods; and
 - (iii) the applicant in relation to those goods; and
 - (iv) where the Secretary is taking action under Section 18 of this Act, the Government of the third country on behalf of whom the Secretary is taking action; and
- (c) Published in the Gazette.

10. Initiation and subsequent investigation

(1) Subject to this Section, on receipt of a properly documented application made by or on behalf of New Zealand producers of like goods and on being satisfied that sufficient evidence has been provided that -

- (a) Goods imported or intended to be imported into New Zealand are being dumped or subsidized; and
 - (b) by reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded -
- the Secretary may initiate an investigation to determine both the existence and the effect of any alleged dumping or subsidization of any goods.

(2) For the purposes of this Section, a properly documented application must include:

- (a) Evidence of -
 - (i) Dumping or subsidization, as the case may be;
 - (ii) injury to the industry; and
 - (iii) a causal link between the alleged dumping or subsidization and the alleged injury; and
- (b) Such information as is reasonably available to the applicant in relation to the following:
 - (i) The names of the New Zealand producers making the application;
 - (ii) the names of all other known New Zealand producers of like goods;

- (iii) a description of the volume and value of the domestic production of the like goods both by the producers referred to in subsection (i) of this paragraph and the producers referred to in subsection (ii) of this paragraph;
- (iv) a complete description of the allegedly dumped or subsidized goods;
- (v) the names of the countries of origin or export of the allegedly dumped or subsidized goods;
- (vi) the name of each known exporter or overseas producer of the allegedly dumped or subsidized goods;
- (vii) the names of persons known to be importing the allegedly dumped or subsidized goods;
- (viii) in the case of subsidized goods, the existence amount and nature of the subsidy;
- (ix) normal values of the allegedly dumped goods when destined for consumption in the domestic markets of the countries of origin or export (or, where appropriate, either the prices at which the goods are sold from the countries of origin for export to third countries, or the prices based on a constructed value);
- (x) the export prices of the allegedly dumped or subsidized goods (or, where appropriate, the prices at which the goods are first resold in arm's length transactions in New Zealand);
- (xi) the import volumes into New Zealand of the allegedly dumped or subsidized goods;
- (xii) the effects that the imports of the allegedly dumped or subsidized goods have had, or will have, on prices of like goods in New Zealand;
- (xiii) the consequent impact of those imports on the industry; and
- (xiv) relevant factors affecting the industry that may have a bearing on the information required under subparagraphs (xii) and (xiii) of this paragraph.

(3) An investigation shall not be initiated under this Section unless the Secretary is satisfied that the collective output of those New Zealand producers who have, in writing, expressed support for the application constitutes -

- (a) 25 per cent or more of the total New Zealand production of like goods produced for domestic consumption (assessed during the most recent representative period, being not less than six months); and
- (b) more than 50 per cent to the total production of like goods produced for domestic consumption (as so assessed) by those New Zealand producers who have, in writing, expressed support for or opposition to the application.

(4) Where the Secretary initiates an investigation, pursuant to subsection (1) of this Section, in respect of the dumping or subsidizing of goods, notice of the initiation of the investigation shall be given.

(5) Upon the initiation of an investigation by the Secretary pursuant to subsection (1) of this Section and thereafter during the course of the investigation, evidence of the dumping or subsidization and of the material injury to an industry shall be considered simultaneously.

(6) The Secretary, after initiating an investigation pursuant to subsection (1) of this Section, shall ensure that all interested parties to the investigation are given reasonable opportunity -

- (a) To present in writing all evidence relevant to the investigation, and, upon justification being shown, to present such evidence orally;
 - (b) unless the information may be withheld under the Official Information Act 1982, to have access to all non-confidential information relevant to the presentation of their case and that is used by the Secretary in the investigation, and to prepare representations on the basis of that information;
 - (c) on request being made, to meet those parties with adverse interests in order to present opposing views.
- (7) Where a party has submitted information to the Secretary, and has shown good cause for the Secretary to believe -
- (a) That the information would be of significant competitive advantage to a competitor of, or the disclosure of the information would otherwise have a significant adverse effect upon -
 - (i) The party who submitted the information; or
 - (ii) the party from whom the information was acquired by the party who submitted the information; or
 - (iii) any party to whom the information relates; or
 - (b) That the information otherwise should be treated as confidential -
- the Secretary shall not disclose that information without the specific permission of any such party that would be adversely affected by its release.
- (8) The Secretary may request parties who have provided confidential information to furnish -
- (a) A non-confidential summary of the information; or
 - (b) if it is claimed that the information is not susceptible of such summary, a statement of the reasons why such summary is not possible - and the Secretary may disregard any information for which the party submitting it fails to provide either a satisfactory summary or satisfactory reason why such summary cannot be provided.
- (9) Before initiating an investigation under subsection (1) of this Section the Secretary shall -
- (a) Notify the Government or Governments of the country or countries of export of the goods that are the subject of the proposed investigation; and
 - (b) in the case of an application for the investigation into the subsidization of any goods, give that Government of those Governments a reasonable opportunity for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.
- (10) Nothing in this Section shall authorise the Secretary to initiate an investigation in relation to any alleged dumping of goods of Australian origin.

10A. Notice to parties to investigation

(1) Subject to subsection (2) of this Section, within 150 days after the initiation of an investigation under Section 10 of this Act, the Secretary shall give to the parties to the investigation referred to in Section 9(b) of this Act written advice of the essential facts and conclusions that will likely form the basis for any final determination to be made under Section 13 of this Act.

(2) Nothing in subsection (1) of this Section limits the Official Information Act or Section 10(7) of this Act.

11. Termination of investigations

(1) Where the Minister, at any time before making a final determination under Section 13 of this Act is satisfied in respect of some or all of the goods under investigation, that -

- (a) There is insufficient evidence of dumping or subsidising to justify proceeding with the investigation; or
- (b) there is insufficient evidence that material injury to a New Zealand industry has been or is being caused or is threatened or the establishment of a New Zealand industry has been or is being materially retarded by means of the subsidizing or dumping of the goods; or
- (c) in the case of subsidization, the imposition of a countervailing duty in respect of those goods would be inconsistent with New Zealand's obligations as a party to the WTO Agreement; or
- (d) the application for the investigation has been withdrawn in writing by those New Zealand producers by or on whose behalf the application was made; or
- (e) New Zealand producers who previously expressed support for the application for the investigation have withdrawn that support in writing to such an extent that, by reason of Section 10(3) of this Act, the investigation could not have been initiated -

the Minister shall -

- (f) Terminate the investigation with respect to those goods; and
- (g) give notice of such termination.

(2) For the purposes of subsection (1)(a) of this Section, evidence of dumping and subsidizing shall be deemed to be insufficient where -

- (a) In the case of dumping, the margin of dumping is less than 2 per cent (expressed as a percentage of the export price); or
- (b) in the case of subsidization, the amount of the subsidy is less than 1 per cent of the value of the goods at the time of import; or
- (c) in the case of either dumping or subsidization, the volume of imports of dumped or subsidized goods, expressed as a percentage of total imports of the goods into New Zealand, is negligible, having regard to New Zealand's obligations as a party to the WTO Agreement.

(3) Where -

- (a) Any investigation is terminated under subsection (1) of this Section, and it is subsequently ascertained that information supplied affecting the investigation was incorrect or did not disclose material facts, and that the information is of such nature as materially to affect the decision to terminate the investigation; or
- (b) any investigation is terminated pursuant to an undertaking given by the Government of the country of export or by an exporter, as the case may be, under Section 15(1) of this Act and that Government or that exporter violates that undertaking, -

the Secretary may initiate a further investigation and all the provisions of this Act shall have effect accordingly.

(3) Notice shall be given of the initiation of every further investigation under subsection (2) of this Section.

12. [deleted]

13. Final determination

(1) Subject to Section 11 of this Act, within 180 days after the initiation of an investigation under Section 10 of this Act (but not less than 30 days after the provision of information in accordance with Section 10A of this Act), the Minister shall make a final determination as to whether or not, in relation to the importation or intended importation of goods into New Zealand -

- (a) The goods are being dumped or subsidized; and
- (b) by reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.

(2) Notice of the final determination of the Minister shall be given as soon as practicable after it is made.

14. Anti-dumping and countervailing duties

(1) At any time after the Minister makes a final determination under Section 13(1) of this Act in relation to goods, the Minister may give notice of the rate or amount of duty determined under subsection (4) of this Section (which notice may be given simultaneously with, or at any time after, the notice given under Section 13(2) of this Act) and there shall, with effect on and from the applicable date referred to in Section 17 of this Act, be imposed -

- (a) In respect of those goods that are dumped, a duty to be known as anti-dumping duty;
- (b) in respect of those goods that are subsidized, a duty to be known as countervailing duty.

(2) Anti-dumping duty or countervailing duty, as the case may be, imposed under subsection (1) of this Section, shall be collected and paid on the demand of the Collector on and from the day after the date on which the notice under subsection (1) of this Section is published in the Gazette.

(3) Notwithstanding subsection (1)(b) of this Section, no countervailing duty may be imposed under this Section if to do so would be inconsistent with New Zealand's obligations as a party to the WTO Agreement.

(4) The anti-dumping duty or countervailing duty in the case of goods to which this Section applies shall be a rate or amount determined by the Minister -

- (a) In the case of dumped goods, not exceeding the difference between the export price of the goods and their normal value; and
- (b) in the case of subsidized goods, not exceeding the amount of the subsidy on the goods.

(5) In exercising the discretion under subsection (4) of this Section, the Minister shall have regard to the desirability of ensuring that the amount of anti-dumping or countervailing duty in respect of these goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to an industry or the material retardation to the establishment of an industry, as the case may require.

(6) The Secretary may initiate a reassessment of any rate or amount of anti-dumping or countervailing duty determined under subsection (4) of this Section, including any elements of any formula used to establish such a rate or amount, -

- (a) On the initiative of the Secretary; or
- (b) where a request for a reassessment is submitted to the Secretary by an interested party who submits evidence justifying the need for a reassessment; or

(c) following the completion of a review carried out under subsection (8) of this Section - and the Minister may determine a new rate or amount in accordance with subsection (4) of this Section, and, in that event, shall give notice of the new rate or amount.

(7) The Minister may, by notice, terminate in whole or in part the imposition of any anti-dumping duty or countervailing duty imposed under this Section, with effect from the date specified in the notice which date may be prior to the date of the notice.

(8) The Secretary may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of the imposition of anti-dumping duty or countervailing duty in relation to goods and shall complete that review within 180 days of its initiation.

(9) Anti-dumping duty or countervailing duty applying to any goods shall cease to be payable on those goods as at a date that is five years after -

- (a) The date of the final determination made under Section 13 of this Act in relation to those goods; or
- (b) the date of notice of any reassessment of duty given under subsection (6) of this Section, following a review carried out under subsection (8) of this Section -

whichever is the later, unless, at that date, the goods are subject to review under subsection (8) of this Section.

(10) Without limiting the ability of the Minister to require refunds in other circumstances, where a reassessment under subsection (6) of this Section results in a lower duty being imposed on those goods, the Minister may require the Collector to refund, with effect from the date of the initiation of the reassessment (or, in the case of a reassessment carried out under paragraph (c) of that subsection, from the date of the initiation of the review referred to in that paragraph), the difference between the duty paid and the lower duty.

15. Price undertakings

(1) Subject to subsection (1A) of this Section, where, in relation to the exportation of any consignment of goods to New Zealand, the Secretary has initiated an investigation pursuant to Section 10 of this Act, the Minister may terminate consideration of that consignment if the Minister is given and accepts an undertaking by the Government of the country of export or by the exporter of the goods that the Government or the exporter, as the case may be, will so conduct future export trade to New Zealand of like goods to the goods in the consignment to avoid causing or threatening material injury to an industry or materially retarding the establishment of an industry.

(1A) Before accepting any undertaking given under subsection (1) of this Section, the Minister must have reasonable cause to believe, in relation to the importation or intended importation into New Zealand, that -

- (a) The goods are being dumped or subsidized; and
- (b) by reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.

(2) Any price increases in an undertaking accepted by the Minister shall not exceed the difference between the export price of the goods and their normal value or the amount of subsidization, as the case may be.

(3) The Minister may be given and accept any amendment to an undertaking because of altered circumstances.

(4) If the Minister accepts an undertaking, the investigation of the extent of injury to an industry shall nevertheless be completed if the Minister or the Government of the country of export or the exporter, as the case may be, so desires.

(5) If an investigation referred to in subsection (4) of this Section is completed and no determination of material injury, threat thereof, or material retardation to the establishment of an industry is made, the undertaking shall automatically lapse, except in cases where a determination of no threat of injury is attributable to a significant degree to the existence of the undertaking, in which case the Minister may require that the undertaking be maintained for such reasonable period as the Minister may determine.

(6) The Minister may require any party from whom undertakings have been accepted to provide information relevant to the fulfilment of the undertaking.

(7) The Secretary may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of any undertaking given and accepted under this Section and shall complete that review within 180 days of its initiation.

(8) Any undertaking given and accepted under this Section shall automatically lapse from the date that is the later of 5 years after -

- (a) The date of the acceptance of the undertaking; or
- (b) where a review carried out under subsection (7) of this Section has been completed and the undertaking continued in the same or a modified form, the date of the initiation of that review -

unless, at that date, the undertaking is subject to review under subsection (7) of this Section.

(9) If an investigation is terminated in accordance with subsection (1) of this Section, notice of the termination shall be given.

16. Provisional measures

(1) If, at any time after 60 days from the date on which an investigation has been initiated by the Secretary under Section 10 of this Act, (not being an investigation that has been terminated under Section 11 of this Act) -

- (a) The Minister has reasonable cause to believe, in relation to the importation or intended importation of goods into New Zealand, that -
 - (i) The goods are being dumped or subsidized; and
 - (ii) by reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded; and
- (b) The Minister is satisfied that action under this Section is necessary to prevent material injury being caused during the period of investigation -

the Minister may, by notice, give a provisional direction that payment of duty in respect of the goods shall be secured in accordance with Part IX of the Customs Act 1966, except that the rate or amount of duty to be secured shall not exceed the difference between the export price of the goods and their normal value, or the amount of the subsidy, as the case may be.

(2) Notwithstanding subsection (1) of this Section, at any time after the Secretary has initiated an investigation pursuant to Section 11(3)(b) of this Act, the Minister may by notice give a provisional direction that payment of duty in respect of the goods subject to investigation shall be secured in accordance with Part IX of the Customs Act 1966.

(3) A provisional direction given under subsection (1) or subsection (2) of this Section shall in all cases cease to have effect following the final determination made by the Minister pursuant to Section 13 of this Act.

(4) When a provisional direction given under subsection (1) or subsection (2) of this Section ceases to have effect, any security given pursuant to the provisional direction shall be released, except to the extent that duties are payable on goods imported prior to the direction ceasing to have effect.

(5) Where the amount of dumping duty or countervailing duty imposed pursuant to a provisional direction under subsection (1) or subsection (2) of this Section exceeds the amount of duty determined under Section 14(3) of this Act, the amount of the excess shall be remitted by the Collector if so required by the Minister.

(6) Where the amount of anti-dumping duty or countervailing duty imposed pursuant to a provisional direction under subsection (1) or subsection (2) of this Section is less than exceeds the amount of duty determined under Section 14(3) of this Act, the amount of the difference shall not be collected on those importations subject to the provisional direction.

17. Retrospective measures

(1) Except as provided in this Section, the day on and from which anti-dumping duty or countervailing duty is payable on goods to which Section 14 applies shall be -

- (a) Where a provisional direction has been given under Section 16 of this Act in relation to those goods, the day after the date of the decision of the Minister to give notice of that direction; and
- (b) in any other case, the day after the date that Minister makes a final determination under Section 13(1) of this Act.

(2) Where a final determination of material injury to an industry (but not of a threat thereof or of material retardation to the establishment of an industry) is made by the Minister, or in the case of a final determination of threat of material injury where the effect of the dumped or subsidized goods would, in the absence of provisional measures, have led to a finding of material injury, anti-dumping duty or countervailing duty, as the case may require, may be levied retrospectively for the period for which the provisional measures, if any, have been applied.

(3) Where the Minister determines -

- (a) In respect of dumped goods -
 - (i) Either that there is a history of dumping causing material injury or that the importer was or should have been aware that the goods were dumped and that such dumping would cause injury; and
 - (ii) that the material injury is caused by substantial dumped imports of a product in a relatively short period to such an extent that in order to preclude it recurring the Minister is of the opinion that it appears necessary to impose an anti-dumping duty retrospectively.
- (b) In the case of subsidized goods, in critical circumstances, where the Minister determines that material injury which is difficult to repair is caused by massive imports, in a relatively short period, of goods benefitting from export subsidies paid or bestowed inconsistently with the provisions of the WTO Agreement, and where it is deemed necessary, in order to preclude the recurrence of such material injury it is necessary to impose countervailing duty retrospectively, the Minister may impose an anti-dumping or countervailing duty, as the case may be, on goods deemed to have been delivered for home consumption in accordance with Section 17 of the Customs Act 1966 or deemed to have been removed for home consumption under Section 17A of that Act not more than 60 days prior to the date of the application of provisional measures.

(4) Where the Government of the country of export or the exporter, as the case may be, from whom the Minister has accepted an undertaking pursuant to Section 15 of this Act violates the undertaking and the Minister, in accordance with Section 16 of this Act, gives a provisional direction, anti-dumping duty or countervailing duty may be imposed on goods deemed to have been delivered for home

consumption in accordance with Section 17 of the Customs Act 1966 or deemed to have been removed for home consumption in accordance with Section 17A of that Act not more than 60 days before the application of the provisional measures, except that such retrospective duty shall not apply to goods deemed to have been delivered for home consumption in accordance with Section 17 of the Customs Act 1966 or deemed to have been removed for home consumption in accordance with Section 17A of that Act before the date of the violation of the undertaking by the Government of the country of export or the exporter, as the case may be.

18. Third country anti-dumping and countervailing duties

- (1) Where the Government of a third country advises the Secretary that -
 - (a) Goods imported or intended to be imported into New Zealand -
 - (i) Were produced or manufactured in another country; and
 - (ii) have been dumped or subsidized; and
 - (b) By reason of the dumping or subsidization -
 - (i) Material injury to a domestic industry of a third country (being a country other than New Zealand and other than the country in which the goods were produced or manufactured) has been or is being caused or is threatened; or
 - (ii) the establishment of a domestic industry of such a country has been or is being materially retarded -

the provisions of this Act (including, without limitation, Sections 10, 11, 14, 15, 16, and 17 of this Act) shall, with all necessary modifications, apply with respect to the effect of those goods on that third country's domestic industry in the same manner as they apply with respect to the effect of those goods on a New Zealand industry.

19. Savings

- (1) Any investigation initiated under Section 186H of the Customs Act 1966 (as inserted by Section 2(1) of the Customs Acts Amendment Act (No. 3) 1987) shall be continued, completed, determined, and enforced as if Part VA of the Customs Act 1966 (as so inserted) were still in force.
- (2) Any investigation initiated under Section 186A of the Customs Act 1966 (as inserted by Section 11 of the Customs Acts Amendment Act (No. 2) 1983) shall be continued, completed, determined and enforced as if Part VA of the Customs Act 1966 (as so inserted) were still in force.
- (3) Notwithstanding subsections (1) and (2) of this Section, any review, revocation or revision, as the case may be, pursuant to -
 - (a) Section 186K(3), Section 186L(4) or (5), or Section 186M(7) of the Customs Act 1966 (as inserted by Section 2(1) of the Customs Amendment Act (No. 3) 1987), or
 - (b) Section 186A(9) or Section 186D(6) of the Customs Act 1966 (as inserted by Section 11 of the Customs Acts Amendment Act (No. 2) 1983), -

shall be carried out by the Minister of Commerce.

- (4) Anti-dumping duty or countervailing duty charged on goods pursuant to Section 186L of the Customs Act 1966 (as inserted by Section 2(1) of the Customs Amendment Act (No. 3) 1987) and dumping duty imposed on goods pursuant to Section 186A of the Customs Act 1966 (as inserted by Section 11 of the Customs Acts Amendment Act (No. 2) 1983) may, from time to time, be reassessed in accordance with Section 14(6) of this Act as if the rate or the amount of that duty had been determined under Section 14(4) of this Act.

20. Consequential amendments

- (1) The Customs Act 1966 is hereby amended by repealing Part VA.
- (2) The Customs Amendment Act (No.3) 1987 is hereby repealed.

This Act is administered by the Ministry of Commerce.

See also Dumping and Countervailing Duties Amendment Act 1994:

21. Transitional provisions

Every investigation, review, or reassessment initiated under the principle Act before the commencement of this Act shall be continued, completed, and determined in accordance with the provisions of the principle Act as in force immediately before the commencement of this Act (as if those provisions had already been amended by Section 18(1) of this Act).

Section 18(1) of the Dumping and Countervailing Duties Amendment Act 1994 amended s.17(1) of the principle Act as set out above.